

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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4 UNITED STATES OF AMERICA, )  
5 Plaintiff, ) C12-01282-JLR  
6 v. ) SEATTLE, WASHINGTON  
7 CITY OF SEATTLE, )  
8 Defendant. ) August 10, 2021 -  
9 ) 1:30 P.M.  
10 ) STATUS CONFERENCE  
11 )  
12 )

13  
14 VERBATIM REPORT OF PROCEEDINGS  
15 BEFORE THE HONORABLE JAMES L. ROBERT  
16 UNITED STATES DISTRICT JUDGE  
17

18 APPEARANCES:

19 For the Plaintiff: Christina Fogg  
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22 Seattle, WA 98101

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For the CPC:

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Monitoring Team:

Antonio M. Oftelie, Monitor  
Ronald R. Ward, Assistant Monitor

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1 THE COURT: Please be seated.

2 The clerk will call this matter.

3 THE CLERK: Case No. C12-1282, United States of America  
4 versus City of Seattle.

5 Counsel, please make your appearances for the record.

6 MS. FOGG: Good afternoon, Your Honor. Christina Fogg  
7 for the United States.

8 MR. MYGATT: Good afternoon, Your Honor. Tim Mygatt for  
9 the United States.

10 THE COURT: Thank you.

11 MR. HOLMES: Good afternoon, Your Honor. Pete Holmes  
12 for the City of Seattle.

13 MS. COWART: Good afternoon, Your Honor. Kerala Cowart  
14 for the City of Seattle.

15 THE COURT: Thank you.

16 Mr. Oftelie, do you want to introduce yourself?

17 MR. WARD: Good afternoon, Your Honor. Ron Ward with  
18 the Monitoring Team.

19 MR. OFTELIE: Good afternoon, Your Honor. Monitor,  
20 Antonio Oftelie.

21 THE COURT: Thank you.

22 The Court asked everyone to come in today for the purpose  
23 that it's been a while since we've had a status conference and I  
24 want to continue our tradition of trying to keep people as well  
25 informed as we can.

1 For the people who are speaking today, you're welcome to go  
2 to the podium, because we are videotaping the hearing, and you  
3 can take your mask off when you're there. Other than that,  
4 please keep your masks on. I think I'm the only one who's  
5 privileged enough not to since I'm surrounded by air purifiers.

6 I've asked the parties, in addition to the Community Policing  
7 Commission, to speak today, and I asked them to update me for no  
8 more than 10 to 15 minutes on three questions: what has been  
9 going on in regards to the Consent Decree in recent months;  
10 second, what are your areas of current attention; and third,  
11 issues that you want to bring to the Court's attention.

12 And since the Department of Justice is the plaintiff in this  
13 matter, I'll begin with you.

14 MS. FOGG: Thank you, Your Honor.

15 I would like to start, if I may, with a brief reminder of the  
16 recent history of the Consent Decree. And I promise not to go  
17 back to the beginning --

18 THE COURT: Well, I intend to.

19 MS. FOGG: -- as I sometimes have.

20 THE COURT: You don't like July 27th, 2012?

21 MS. FOGG: Well, it predates me, so ... It helps me to  
22 speak at least from the time that I was involved, which was  
23 around 2014.

24 And, Your Honor, you're right, the Consent Decree really goes  
25 back to the investigation in 2011 and the entry of the agreement

1 in 2012, but after the initial few years of work was done under  
2 the Consent Decree, we turned our attention, in 2014 through  
3 2017, to having the Monitoring Team and the Department of Justice  
4 conduct several rounds of assessments of SPD's systems and  
5 practices to determine whether the City of Seattle had  
6 successfully complied with a hundred paragraphs contained in the  
7 "Commitment" section of the Consent Decree.

8 In 2018, based on the results of those assessments, the Court  
9 determined that the City had in fact demonstrated full and  
10 effective compliance at that time.

11 So the next step was in 2018 and 2019. The City itself  
12 undertook additional assessments that were overseen by the  
13 Monitoring Team and the Department of Justice to evaluate whether  
14 SPD had sustained compliance for a period of two years as is  
15 required. During that same period, Your Honor will recall that,  
16 in 2019, the Court found that the City had fallen out of  
17 compliance with accountability but indicated that the City could  
18 continue to assess whether it had sustained compliance with the  
19 100 paragraphs of commitments.

20 So at the conclusion of those sustainment assessments, the  
21 City, DOJ, and the Monitor agreed that the City had demonstrated  
22 sustained compliance in those areas. Accordingly, in May 2020,  
23 early May, the City moved to terminate a hundred paragraphs of  
24 these commitments, and we supported that motion; however, as  
25 everyone is aware, after the killing of George Floyd on May 25th,

1 2020, protests erupted nationwide, and Seattle Police  
2 Department's response to those protests was the subject of  
3 considerable public concern. In response, the City rescinded its  
4 motion for termination, and because of that, the Consent Decree  
5 today remains a live agreement that is still in effect. Because  
6 of that, we need to continue to evaluate the City's compliance  
7 with its terms.

8 So as Your Honor is certainly well aware, at the end of last  
9 year, you appointed a new monitor, Dr. Oftelie, and we have  
10 worked with him and his team at the end of last year and the  
11 beginning of this year in developing a Monitoring Plan.

12 The purpose of that Monitoring Plan, which is described in  
13 paragraph 183 of the Consent Decree, is to set forth measurable  
14 objectives from which to evaluate whether the City has continued  
15 to sustain compliance.

16 The Monitoring Plan, as we craft it, also contains  
17 requirements that the City brief DOJ, the Monitor, and the Court  
18 on the City's actions in the areas of back-end accountability,  
19 innovation and risk management, and reimagining public safety.  
20 These areas were included so that as the City takes on issues and  
21 areas of reform beyond the commitments of the Consent Decree, DOJ  
22 and the Monitor can ensure that they do not inadvertently  
23 undermine reforms that were already made.

24 At the end of February of this year, the Court approved that  
25 Monitoring Plan -- it can be found at Docket 655-1 -- and we have

1    been conducting the work set forth in that plan since that time.  
2    Under the terms of the plan, and as we have throughout the  
3    Consent Decree, we first worked with the City and the Monitor to  
4    develop a detailed methodology on how each of the areas of the  
5    Monitoring Plan will be assessed. These areas include use of  
6    force, use of force review and investigation, stops and  
7    detentions, crisis intervention and supervision.

8           Pursuant to the methodology, SPD has now produced a large  
9    amount of data, analysis, documents and information, and we are  
10   in the midst of reviewing those productions. We have also worked  
11   with the Monitor and his team to select a randomized sample of  
12   uses of force from last summer and have set about reviewing the  
13   documents associated with those incidents through the prism of  
14   the Consent Decree requirements related to use of force.

15          We know that the accountability partners -- the Office of  
16   Police Accountability, the Office of the Inspector General, and  
17   the Community Police Commission -- have also been evaluating some  
18   of those same protest incidents, and we have been reviewing their  
19   work with interest. It is our hope that there will be synergy  
20   between our work and theirs. After all, it is the accountability  
21   partners who will largely be responsible for carrying the work of  
22   reform forward after the Consent Decree ends.

23          To be clear, the role of these partners and the eventual  
24   transition of our work to theirs was always contemplated as a  
25   critical part of this process. The Consent Decree is not

1 intended to hold a monopoly on reform or to be a permanent  
2 fixture in the City's reform efforts. Rather, the Consent Decree  
3 was intended to, one, make specific changes to address specific  
4 problems identified in our investigation and, two, act as a  
5 catalyst to further reform by empowering entities like the OPA,  
6 OIG, and CPC to take the reins of oversight and reform that go  
7 beyond the limited scope of the Consent Decree and continue after  
8 it ends. However, until the Decree is terminated, we will  
9 continue doing the important work set forth in the Monitoring  
10 Plan to evaluate whether there has been sustained compliance with  
11 its terms. So between now and the end of the year, we intend to  
12 complete our analysis and share our findings with the Court in  
13 briefing, in accordance with the Monitoring Plan schedule.

14 That's all. Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Mygatt, do you wish to say anything?

17 MR. MYGATT: No, Your Honor. I have nothing to add.

18 THE COURT: Let me ask you, then, the question -- and  
19 you can stay seated for responding to this -- what is your  
20 expectation regarding the role of the Consent Decree going  
21 forward? Do you see it as continuing to be the basis of the work  
22 of the litigation?

23 We have a fundamental disagreement as to the scope of the  
24 Consent Decree vis-à-vis discipline and accountability. That's  
25 been sort of tacked on in a part of the plan that I wrote in late



1 February. I'm trying to get a sense of where the Department of  
2 Justice is these days because we have gone from full support of  
3 the Consent Decree to we think termination of the Consent Decree  
4 and then implicitly abandoning that position, and now I want to  
5 know where you are now.

6 MS. FOGG: Are you --

7 THE COURT: Either one of you.

8 MR. MYGATT: I'm happy to try to address that, Your  
9 Honor.

10 I guess what I would say to that is that because the last  
11 time compliance with the Consent Decree had been thoroughly  
12 assessed was before the City moved for termination of the hundred  
13 paragraphs of the Consent Decree and we supported it at that  
14 time. We've now had a significant time period that's elapsed.  
15 And so under the Monitoring Plan, the plan was, we need to go  
16 back and see what's happened during that time period to determine  
17 whether or not compliance with the Consent Decree terms have been  
18 sustained so that we can then come to you, Your Honor, and  
19 represent to you whether or not we think the Consent Decree needs  
20 to continue or the Consent Decree --

21 THE COURT: You need to slow down a little, Mr. Mygatt.

22 MR. MYGATT: Certainly.

23 To determine whether or not the Consent Decree needs to  
24 continue or whether or not the Consent Decree is in a position  
25 where at least a significant portion of it would be moving

1 towards termination. We can't prejudge that at this point  
2 because that review is ongoing. The City is still giving us its  
3 documents related to its sustained compliance in a number of  
4 different areas, and we're looking with specificity at some areas  
5 of concern that arose last summer around use of force in the  
6 protest circumstances that occurred last summer. So we want to  
7 be able to come to the Court and represent, you know, whether or  
8 not compliance has been sustained since the Consent Decree has  
9 been in effect that entire period.

10 THE COURT: So let me see how successful I can be of  
11 putting words in your mouth. You are willing to engage in not an  
12 assumption but a probability that there is compliance vis-a-vis,  
13 depending upon how you count, six or so of the Consent Decree  
14 major topics. I'm reserving out from that use of force, which  
15 really was crowd control, which is still an open item, and the  
16 Court's belief, and therefore what will be the truth, that  
17 discipline and accountability are still open.

18 Is that a fair summary of the federal government's position?

19 MR. MYGATT: I think I would modify that a little bit,  
20 Your Honor, to say that we are not assuming that they're still in  
21 compliance with those six other areas, but, instead, the City has  
22 to demonstrate sustained compliance in the same way that it  
23 demonstrated sustained compliance during the original sustainment  
24 period that came through the beginning of -- through January 2020  
25 or so. And so the City still is going to validate whether or not

1 it has maintained compliance in those areas. There's no  
2 assumption being made.

3 On the other two areas, we recognize that the Court has ruled  
4 that there's certain measures that still need to be taken with  
5 regard to accountability, and we acknowledge that, Your Honor, as  
6 well as we want to take a look at what happened in use of force.  
7 We're going to be looking at a lot of sustainment compliance by  
8 the City in that area, but we're also taking a specific look at  
9 some of the issues that arose last summer because they raise  
10 significant concerns such that the City withdrew its motion. So  
11 we need to make sure that we can represent to the Court whether  
12 or not that has stayed in compliance as well.

13 THE COURT: That's a more articulate statement of what I  
14 was trying to accomplish. Thank you.

15 MR. MYGATT: Yeah.

16 THE COURT: Mr. Holmes, I don't believe we have been  
17 introduced.

18 MR. HOLMES: Good afternoon, Your Honor. If you could  
19 give me a moment.

20 You would think a country that has commercial space flights  
21 would have worked out a better way to coordinate glasses, hearing  
22 aids, and masks, but, alas, that's not been true the last 16 to  
23 18 months.

24 THE COURT: Well, welcome, sir.

25 MR. HOLMES: It's good to see you again, Your Honor.

1 And may it please the Court. I am Pete Holmes, the current-  
2 elected City Attorney for the City of Seattle.

3 I note that last time I think we were here prepandemic, we  
4 discussed the fact that Your Honor and I were the last two  
5 signatories out of five that were still in office for the Consent  
6 Decree, and as of New Year's Day, that honor falls to you alone,  
7 Your Honor, so --

8 THE COURT: That does not mean that I'm happy about it.

9 MR. HOLMES: There are mixed feelings all around.

10 THE COURT: You will recall that -- I think it's  
11 paragraph 3 that says that this was a five-year gig. That was  
12 done in 2012.

13 MR. HOLMES: That's right, Your Honor. But it takes the  
14 time it takes.

15 THE COURT: True.

16 MR. HOLMES: And, Your Honor, I do want to make sure --  
17 I think it's important to note that Ms. Cowart, Kerala Cowart,  
18 my Assistant City Attorney colleague on this case, is going to  
19 take on even more importance. She has been key to this case.  
20 She knows it backwards and forwards. She has the relationships  
21 with the Monitoring Team, DOJ, SPD, the counsel, the OPA  
22 Director, the Office of the Inspector General, as well as City  
23 Council, and the two leading contenders for mayor who were also  
24 former City Council members. So I do think that -- I want to  
25 commend Kerala again to you as an incredible resource and a

1 brilliant lawyer.

2 But for the rest of my time, Your Honor, today, I do want to  
3 highlight the City's achievements over the past month, consistent  
4 with the quarterly report that was just filed. At the same time,  
5 it's important to recognize, Your Honor, as DOJ alluded, that the  
6 Monitor and DOJ are in the process of assessing SPD's compliance  
7 even now under the Consent Decree. Their analysis and findings  
8 will inform this Court's conclusions about compliance with the  
9 Consent Decree and how to move forward.

10 The experience of the past year demonstrates that the Consent  
11 Decree has equipped the City with institutions and processes  
12 necessary to correct -- to correct course, to change course, when  
13 problems arise. We all agree, I believe, that SPD's response to  
14 the protests over George Floyd's murder in the summer of 2020  
15 undermined public confidence, and it demonstrated that the City  
16 was unprepared to address events of that nature and magnitude.  
17 That's why I decided to withdraw the City from the motion that  
18 was then pending to terminate the sustainment plan.

19 As I said at the time, the accountability system was about to  
20 undergo a stress test like it had never seen before. In the  
21 aftermath, that's when the Executive and City Council asked the  
22 Inspector General, OPA, and the CPC to make recommendations, and  
23 they were submitted to the Court in August. Based on those  
24 recommendations and its own internal review, SPD has made  
25 numerous changes to its crowd-management policies, tactics, and

1 trainings. It's been nothing short of heroic, actually, since  
2 last spring when this Court approved SPD's revised policies, that  
3 SPD undertook a major effort to train every officer on the force  
4 in these new crowd-management policies and tactics. And the  
5 accountability entities are indeed determining what happened  
6 during those protests and how to move forward.

7 In addition to making recommendations based on best  
8 practices, the Inspector General also set about convening a  
9 community-oriented process called a Sentinel Event Review to  
10 examine SPD's responses to the protests through a non-blaming,  
11 forward-looking framework. The first panel recently, wave one,  
12 recently issued its recommendations and insights into some of the  
13 most infamous protest incidents. OPA, for its part, has  
14 investigated an unprecedented number of allegations of police  
15 misconduct stemming from the protests. And it's important to  
16 recognize, Your Honor, throughout all of this, that it is the  
17 role of the Consent Decree, in establishing the accountability  
18 system, is why we have this rigorous system. CPC was formed as a  
19 requirement of the Consent Decree, to give the community a voice  
20 into SPD's operations and policies. And although OPA preexisted  
21 the Consent Decree, the rigors of its system was made more robust  
22 through the Consent Decree process. And the Inspector General  
23 was formed by legislation put into motion by the Consent Decree.

24 So in addition to examining the events of last year, the City  
25 has been working to address the accountability concerns raised by

1 the Court. With its noncompliance ruling in 2019, this Court  
2 spurred actions within the City to improve the collective  
3 bargaining process and pursue contract reforms in areas  
4 identified by the Court. Since then, since 2019, the Court has  
5 worked to identify areas where change could be made quickly and  
6 without extensive bargaining, and it has taken concrete steps in  
7 these areas, such as executing an MOU to ensure that OPA finds  
8 out immediately when the 180-day clock begins to run or stops and  
9 restarts because of a prosecutor's review.

10 The City has enacted legislation establishing subpoena  
11 procedures for OPA and the Inspector General, augmenting OPA's  
12 website, to increase transparency into police discipline and  
13 disciplinary appeals, both of those measures.

14 Starting in 2020, OPA began posting anonymized information  
15 about the disciplinary resolution for each of its investigations  
16 and the status of all pending or open disciplinary appeals on its  
17 website. As a result, a member of the public can now look up any  
18 OPA case from 2016 forward and read the OPA Director's findings,  
19 determine what discipline the chief imposed, and whether that  
20 discipline has been appealed, and on top of that, the status and  
21 the final outcome for each appeal.

22 The City has modified the collective bargaining process to  
23 obtain a greater level of community input, including, for the  
24 first time, giving the Community Police Commission a formal role  
25 in the bargaining process. It's important that the City's new

1 collective bargaining process, newly developed through  
2 collaboration between the Executive and the City Council, be  
3 tested. That is one of the reasons why the proposal to include  
4 the Monitor in the bargaining, while well intentioned, it's  
5 probably not in the best interests for a sustainable foundation  
6 for the City to sustain reform. And, finally, the recent Court  
7 of Appeals ruling, one that I'm particularly proud of, regarding  
8 Adley Shepherd goes beyond just simply the result, Your Honor.  
9 It has created precedent that is going to make it very difficult  
10 for any future arbitrator to consider reinstating an officer who  
11 has been terminated because of the excessive use of force. The  
12 law has actually shifted as a result of the litigation, and I'm  
13 confident that next year we will be defending that, if it's not  
14 concluded, before the Washington Supreme Court.

15 So the City has taken these concrete steps forward, and these  
16 were the achievable ones, but the improvements that are made thus  
17 far, Your Honor, do not alter the fact that broader changes to  
18 the collective bargaining agreement can be achieved only by  
19 bargaining a new contract. The City understands that addressing  
20 the Court's concerns is critical to restoring public confidence.  
21 Substantive contract reforms with SPMA and SPOG would allow the  
22 City to continue to improve and strengthen police accountability.  
23 To that end, the Executive and members of City Council had  
24 publicly committed that the Court's areas of concern will be top  
25 priorities in the current round of bargaining negotiations. And



1 I am going to give you a very quick update on the status of those  
2 negotiations.

3 Currently, SPMA, the Seattle Police Management Association  
4 for captains and lieutenants, the negotiations are quite far  
5 along, and the parties are now in mediation over some sticking  
6 points. Although the SPOG bargaining negotiations themselves  
7 have not yet started, I am personally surprised at the level of  
8 work that the City has accomplished through the Executive and the  
9 Labor Relations Policy Committee of the Council in setting the  
10 parameters, that is, the overall costs, expense, and terms  
11 and the like, key terms, for the police contract. They are very  
12 close to finalizing those internal bargaining parameters or those  
13 priorities, which are called parameters. And so, again, it's a  
14 process that's moving along very quickly.

15 I want to conclude, Your Honor, with an observation. Maybe  
16 that's in answer to your third question about concerns. And that  
17 is, of course, the SPOG negotiations, in particular, will be  
18 conducted largely under a new executive. The fact that a fifth  
19 mayor since I have been in office will be leading those  
20 negotiations underscores our challenge, the City's challenge, of  
21 struggles with continuity and leadership. We'll be -- In fact,  
22 though, it's kind of uniform through the City because SPOG will  
23 be bargaining with its third or fourth president since I have  
24 been in office. And all the while, of course, the City is  
25 required to conduct by the charter a new search for a police

1 chief.

2 So I can say that I'm leaving office after not only twelve  
3 years as City Attorney, but I also, you know, would note that  
4 early next year will be actually two decades since I accepted the  
5 appointment to the City's first police oversight board, the OPA  
6 Review Board.

7 And it has just, Your Honor, simply been an immense honor to  
8 work with Your Honor on this case. United States versus City of  
9 Seattle has been the most challenging and rewarding case of my  
10 four decades in the law.

11 We need the police as guardians, Your Honor, not warriors.  
12 That's an often repeated phrase. And it's the paramount goal, of  
13 course, to maintain public safety. That's why I never join a  
14 call to defund or certainly not to abolish the police. Because  
15 Seattle is, instead, about to undertake something much more  
16 exciting, and that is to reimagine policing. And I submit that  
17 there's also something beyond the Court and the police department  
18 itself as we undertake that task, and that is to address some of  
19 the other things that are impacting us every day. That is, the  
20 gap between the haves and the have nots is wider at this point in  
21 time, Your Honor, than at any other time in the last 100 years.  
22 We live in a state with the most regressive revenue structure and  
23 one that is No. 47 in providing mental healthcare and other basic  
24 needs, and so it's of little surprise that we're seeing the kind  
25 of tensions playing out on the streets. With those kinds of

1 statistics, they play out in real life in the same way that  
2 global warming creates wild fires. That's what we're witnessing,  
3 Your Honor. And for the holistic approach and the groundwork  
4 that Your Honor and the Consent Decree have established for the  
5 City of Seattle, I submit that I'm ultimately optimistic that we  
6 are going to move forward, we're going to reimagine the police  
7 under new leadership, and the results of all of the work that  
8 have gone into this Consent Decree cannot be lost, instead we  
9 need to build on them because they have provided the framework  
10 and the path forward.

11 THE COURT: I'm going to ask you to wear one of your  
12 many hats that the City charter asks you to engage in.

13 How do you respond to the criticism that the Court and the  
14 Monitor and the various accountability partners have not been  
15 severe enough on the police?

16 MR. HOLMES: You know, Your Honor, that's inherent in  
17 any system of adjudication, any system of fact-finding and  
18 decision-making. Decisions of a Court can be questioned.

19 I think that the real question, though, is: Is the process  
20 fair? And even when you disagree with the outcome, is that  
21 criticism being taken back and reviewed?

22 I think that, the long review, Your Honor, I haven't seen  
23 cases that I've exactly disagreed with personally. I think that  
24 the force is starting to understand that the OPA process is a  
25 thorough one and it's one that is consistently meeting deadlines,

1 like the 180-day deadline. And then we look to you, Your Honor,  
2 as in the case of Adley Shepherd, where we're able to ensure  
3 appropriate discipline, like termination, sticks.

4 THE COURT: All right. Thank you, sir.

5 Mr. Sargent, if you would come forward, please.

6 The CPC is not a party to this litigation, but you asked to  
7 be heard, and so I'll ask you to deal with the same three  
8 questions that I have asked everyone else to deal with.

9 MR. SARGENT: Thank you, Your Honor. And thank you for  
10 granting our request to be heard today.

11 As Your Honor is aware, the primary issue we wanted to  
12 address was the Court's 1999 finding that the City is out of  
13 compliance with the Consent Decree on certain accountability and  
14 officer discipline areas, and, in particular, we wanted to  
15 address a couple of orders that the Court issued following that  
16 finding.

17 We don't -- I don't think it's worthwhile to review all of  
18 the complex history of that accountability litigation. We're not  
19 interested in looking backwards here. We want to see where we  
20 are today and find the best way to move forward to address these  
21 particular issues that were raised by the Court as a result of  
22 those 1999 proceedings.

23 I think there is some important general background, though,  
24 to keep in mind. There was the Accountability Ordinance that was  
25 passed in, I believe 2017, that was an essential part of the

1 first round of this litigation in getting the City in compliance  
2 with the requirements of the Consent Decree. It was a City  
3 ordinance that many of the accountability partners, certainly  
4 including the CPC, worked on very hard. And following the  
5 enactment of that ordinance, there were collective bargaining  
6 negotiations with both unions which vitiated a number of the key  
7 provisions of that Accountability Ordinance, and as a result of  
8 that, the Court -- as a result and part of those changes, the  
9 Court found that the City had fallen out of compliance.

10 We think that this is an appropriate time for the Court and  
11 the parties to revisit those issues explicitly, both because we  
12 are beginning another round of negotiations with both unions and  
13 because, as I think both of the parties mentioned today, the  
14 events of last summer have provided a stress test on the  
15 accountability measures that are currently in place and provide  
16 some data for all the parties to review to help with that  
17 analysis.

18 The two orders that we wanted to address were issued in  
19 October 2019. The Court directed both parties to submit a  
20 proposal for the Monitor's involvement with oversight of the  
21 efforts to get back in compliance on accountability, and the  
22 Court also ordered the City to provide a written proposal for its  
23 methodology for getting back into compliance.

24 It's CPC's position that either one of those orders has yet  
25 been explicitly complied with. We have had many conversations

1 with the parties in this case, and certainly there's some feeling  
2 that the orders have been effectively complied with or that  
3 certain steps have been taken that are as much as can be done  
4 right now. I think the CPC does not agree with that. But even  
5 if it's true -- and this is an important point that I want to  
6 make today -- even if it is true that it's as much as could be  
7 done with the Monitor's involvement with the City proposing what  
8 it's going to do to get into back into compliance, we believe  
9 that the Court's orders should nevertheless be complied with,  
10 with an explicit filing setting out those steps and those  
11 statements.

12 And there's a couple reasons why that's important. It  
13 provides a focal point for all of the parties and the  
14 accountability partners to respond. Right now, there hasn't been  
15 any actual explanation of the plan or the proposal for getting  
16 back into compliance or any real explanation of the Monitor's  
17 involvement. And because there hasn't been that filing, there's  
18 no place for us to respond to it or make additional proposals.

19 I think it's also really important to the public, to the  
20 press, and to the coming election, people who are following this  
21 case. And, you know, reviewing the elections -- I mean, the  
22 materials in the recent primary election, many of them mentioned  
23 the fact that the City has fallen out of compliance in this area  
24 and the City's, you know, failure to file a proposal, as the  
25 Court ordered. I'm trying not to be critical here, but if they

1 would file the proposal, it would show a willingness to respond  
2 and an active engagement with this particular issue that I think  
3 is missing from the docket as it currently stands.

4 The CPC is suggesting that the parties consider proposals for  
5 additional involvement of the Monitor in two areas. First, the  
6 collective bargaining negotiations that were just discussed by  
7 Mr. Holmes. Currently, those negotiations really are just a  
8 black box. And we know from the prior round of negotiations that  
9 things can come out of those that are crucial to the  
10 implementation of an effective accountability system. And it's  
11 just too long to wait until the process is completely finished,  
12 which, as the Court is aware, can be several years in some  
13 instances, and then have the completed package presented to us  
14 with no ability to respond to it, no ability to modify it.

15 The City's formula --

16 THE COURT: Well, let me stop you there. This is where  
17 I begin to lose track of where you think we're going.

18 Under what authority can I order the Monitor to engage in a  
19 process that's governed by state law?

20 MR. SARGENT: I don't think engaging in the process -- I  
21 guess I'm not certain that you can order the Monitor to engage in  
22 a process, but I think you could order the City to update the  
23 Monitor and provide the Monitor ongoing information about the  
24 status of the negotiations. And that's what we would propose,  
25 that -- I'm sorry?

1 THE COURT: Go ahead and finish.

2 MR. SARGENT: As Mr. Holmes has just explained, the City  
3 is in the process of establishing its parameters for its  
4 negotiations. We think that those parameters are crucial  
5 elements for the Court to be aware of and the DOJ to be aware of.  
6 They don't necessarily need to be shared with all parties or made  
7 public, but to have a sense for how the City is organizing its  
8 priorities in the negotiations is essential information to know  
9 how the Consent Decree process is proceeding. That's the CPC's  
10 position.

11 THE COURT: I think you fundamentally misunderstand the  
12 purpose and my powers under the Consent Decree. I'm not running  
13 the police. The Chief of Police, who I'm honored is here today,  
14 is running the police. The Mayor is running the police. My job  
15 is to tell you when you don't get it right, not how to do it.  
16 Otherwise, I'm usurping the power of the citizens of Seattle to  
17 decide how they want to run their police. And, yet, you have  
18 come here and said, "Order them to do this, order them to do  
19 that." And, frankly, you know, putting this back into legal  
20 terms, I don't understand where my jurisdiction would come from  
21 to do that.

22 MR. SARGENT: Well, I apologize. I'm not suggesting  
23 that the Court order the Monitor to participate in anything. I  
24 was suggesting that the parties respond to the Court's order that  
25 there be a proposal for Monitor involvement in efforts to



1 reestablish compliance. And, as an example, as something that  
2 the City could offer in that circumstance, in our view, is that  
3 the Monitor could be provided with additional information about  
4 the CBA negotiations as they're ongoing rather than waiting until  
5 they're completed.

6 THE COURT: And then what would the Monitor do with  
7 that information?

8 MR. SARGENT: Share it with the Court, along with the  
9 other information that the Monitor is collecting that's related  
10 to accountability.

11 THE COURT: So you're saying that the CPC is not going  
12 to see it?

13 MR. SARGENT: Well, of course, we would love to see it,  
14 but I think that there are legitimate concerns about the  
15 confidentiality of this information that have come up many times  
16 in our discussions with the City on this. And we believe that  
17 the DOJ, the Court, the Monitor, and the City can address issues  
18 raised by the CBA negotiations effectively, but do it in a way  
19 that protects the confidentiality of the information.

20 THE COURT: See, what I see happening here is you file,  
21 excuse me, on July 27th, Docket 676 -- I appreciate you phrasing  
22 it as a request and not a motion, so I don't have to jump on you  
23 for civil procedure matters -- saying, you know, we're being cut  
24 out of the game here, we need you to do this and we need you to  
25 do that. And then, on August 3, the Seattle Police Monitor,

1 Mr. Oftelie, files a semiannual report which, and I will  
2 acknowledge we have taken a slightly different tack with it; we  
3 included information put forward by a number of the  
4 accountability partners. But the police are certainly in here,  
5 the OIG is in here, the OPA is in here, and the CPC is in here.  
6 And that's followed by the City of Seattle filing, as of  
7 March 6th, 29 pages of a quarterly accountability update.

8 You know, the timing is off, it seems to me, in this, in that  
9 if you were going to criticize what they're doing now, you needed  
10 to know what they were doing, which doesn't happen until after  
11 you've filed.

12 MR. SARGENT: Well, Your Honor, we've had extensive  
13 discussions with both the attorneys from the City Attorney's  
14 Office, the DOJ, the Monitor, the other accountability partners  
15 about this issue. The, in our view, failure to respond to the  
16 Court's 2019 orders was a top-level serious concern of my client  
17 as soon as I was retained this spring, and it's something we have  
18 been working on extensively since then.

19 It's true that -- You're absolutely right that the filing of  
20 the City last week and also the Monitor's filing do address some  
21 of the concerns that we have, but, again, I would emphasize the  
22 CPC would like to see a response directly to the order that a  
23 plan be proposed by the City for reestablishing compliance, that  
24 a plan be proposed by the parties for the Monitor's involvement  
25 with these issues. And we don't believe that either of the

1 reports that were filed last week satisfy that requirement.

2 THE COURT: Let's talk a little history here. Are you  
3 familiar with paragraph 7 of the Settlement Agreement, commonly  
4 referred to as the Consent Decree?

5 MR. SARGENT: Not off the top of my head, Your Honor,  
6 no.

7 THE COURT: It says, in regards to the Commission that  
8 you represent, it will have the following distinct roles:  
9 "... undertake the responsibilities assigned to the Commission in  
10 the Agreements, review the reports and recommendations of the  
11 Monitor, and may issue its own reports or recommendations to the  
12 City. The Commission may review and issue reports or  
13 recommendations as to the implementation of SPD's 20/20  
14 initiative." I think that occurred during the Renaissance  
15 period, frankly. "The Commission may consider other issues as  
16 referred by the Parties in Section III.C of the Memorandum of  
17 Understanding."

18 It goes on to talk about, specifically, the questions of  
19 misconduct, it says, "... will not seek to influence the course  
20 or outcome of any specific complaint investigation or discipline  
21 of specific police officers; shall not have access to any  
22 non-public information regarding an individual police officer or  
23 allegation of misconduct or disciplinary action."

24 That's what the role of the CPC under the Consent Decree is.  
25 And you're in federal court, where you and I spend most of our

1 time, and we're dealing with the Consent Decree. You have  
2 referenced the Accountability Ordinance, and I agree with you,  
3 the Accountability Ordinance extinguished the CPC as a part of  
4 the Consent Decree and put it into the City charter. And so I'm  
5 asking why, if that's where your power now comes from, you're  
6 back in federal court saying, "Judge, you know, tell the parties  
7 that the Monitor needs to do this, tell the parties the Monitor  
8 needs to do that." Do you understand? I'm at a loss to this  
9 sort of amorphic role that you want me to take, which, frankly,  
10 is a complete departure from at least two other regimes that have  
11 been the CPC, and I'm trying to get an understanding of where you  
12 think your role in this litigation is.

13 MR. SARGENT: I understand the CPC's role to be as an  
14 amicus. And, again, the Court issued orders in 2019, and we are  
15 providing comment on those orders and the parties' responses to  
16 those orders as an amicus.

17 THE COURT: Well, comment and specific direction of  
18 "make them do something" seem to me to be two different things.

19 MR. SARGENT: But, again -- I apologize, Your Honor --  
20 I'm not intending to make these suggestions as a request for the  
21 Court to issue any order at all. I'm making these suggestions to  
22 show that there are ideas that the CPC believes can be  
23 implemented in response to the Court's order and that the parties  
24 should consider those ideas.

25 THE COURT: Mr. Sargent, let me read you the title of

1 your pleading that you filed with the Court: CPC's Request for  
2 an Order Requiring the Parties to Address these questions. Now,  
3 let's not play, you know, semantic games here. You just said,  
4 "Oh, we're not asking for anything," and your own title of your  
5 pleading is "Request for an Order."

6 MR. SARGENT: The Court properly struck that. And we  
7 should not have filed it framed that way. It was unfortunate and  
8 it was an error. But part of the reason the error was reversed  
9 is that we're not asking the Court -- if you read the pleading,  
10 we're not asking the Court to take any steps. We're asking the  
11 parties comply with the prior order.

12 THE COURT: Well, I can assure you, sir, I have read  
13 your pleadings, and that's not what I got out of them. So why  
14 don't you go ahead and wrap up.

15 MR. SARGENT: Well, the second area where we believe the  
16 Monitor's involvement could effectively be increased with regard  
17 to accountability is that the Monitor could have additional  
18 engagement with individual disciplinary proceedings. The prior  
19 Monitor proposed that. The City and the DOJ rejected it. The  
20 Court overruled the objection on which the City and the DOJ  
21 objected to that proposal, but the proposal has not been  
22 reimplemented. And the current Monitor's engagement with officer  
23 discipline is primarily at a very high level, with the directors  
24 of the OPI and the directors of OIG and the SPD, at least that's  
25 our understanding, and most of the information that's shared is

1 statistical. But the CPC believes that statistics about the  
2 number of complaints that are upheld, for example, is not as --  
3 does not provide as much information as a review of individual  
4 proceedings. I heard from Ms. Fogg that there is going to be  
5 review of some of the individual complaints from last summer, and  
6 maybe that satisfies, you know, what the CPC was concerned about  
7 there. But it's just another example of a suggestion that the  
8 CPC believes shows that there can be more done to respond to the  
9 Court's order regarding the Monitor's involvement with these  
10 issues.

11 THE COURT: Well, why should the Monitor be doing that  
12 in addition to the OPA?

13 MR. SARGENT: The Monitor should be doing -- should be  
14 engaging with the OPA to determine whether or not the OPA's  
15 processes function properly. And instead of just receiving  
16 statistics from Director Myerberg, the proposal would be, from  
17 the CPC, that the Monitor meet with not just Director Myerberg  
18 but some of the more junior investigators on the team, that he  
19 discuss ongoing investigations to confirm that some of the issues  
20 identified by the Court in 1999 {sic}, limits on subpoena power,  
21 timelines, are not negatively impacting the OPA's ability to  
22 execute its duties.

23 THE COURT: Well, you're a relative newcomer to this, so  
24 I'll tell you something that I have said to the parties here  
25 numerous times, which is I ask them to take the training wheels

1 off of the OPA and the OIG, because those are the freestanding  
2 institutions that are building blocks to the Consent Decree. And  
3 to the extent that you are now saying, as the prior Monitor  
4 asked, "Oh, I would like to get back in there and then roll my  
5 sleeves up," no. You know, we've spent a lot of time and a lot  
6 of effort creating institutions. Let's now see if they're going  
7 to work. And if they're not, I'm the first to say we would be  
8 happy to make changes to them. I'm not sure I can in some  
9 circumstances because they're creatures of the City charter.  
10 But, you know, I'm not going to impose the Monitor upon people  
11 who are trying to do their job in this notion that somehow he's  
12 going to be able to do it better or he's going to say something.

13 So why don't you close up, sir.

14 MR. SARGENT: I will just clarify that last point and  
15 then sit down.

16 Again, it is not at all what we were envisioning, that the  
17 Monitor would reconduct an investigation that the OPA has already  
18 conducted. But conversation, frank conversations with Director  
19 Myerberg and with other investigators about the OPA. It's not  
20 about -- not to try to check and determine whether or not  
21 investigations are going the right way or that the Monitor agrees  
22 with the result, but just in order to share information about  
23 whether or not there are impediments to the current process that  
24 are making it difficult for the OPA to execute its duty as the  
25 OPA sees best fit to do. That's the proposal that we're making,

1 Your Honor.

2 THE COURT: Should that be addressed to the Monitor, or  
3 should it be addressed to the Mayor and the City Council?

4 MR. SARGENT: We believe it belongs -- it properly at  
5 least should be considered as a part of the proposal that the DOJ  
6 and the City were to make for the Monitor's involvement in  
7 accountability reform.

8 THE COURT: All right. Thank you, sir.

9 MR. SARGENT: Thank you.

10 THE COURT: Mr. Oftelie.

11 MR. OFTELIE: Good afternoon, Your Honor.

12 THE COURT: Good afternoon. I would have suggested that  
13 you were in the role of batting cleanup, notwithstanding my  
14 wife's advice not to use sports analogies, but since I intend to  
15 go after you, I guess we will have you batting third in this  
16 batting order.

17 MR. OFTELIE: Well, Your Honor, I'm a Minnesota Vikings  
18 fan, so I'm used to ending up last.

19 Your Honor, last week the Monitor and the Monitoring Team  
20 filed a semiannual report with the Court on progress of the  
21 collective work ensuring that policing services are delivered to  
22 the people of Seattle in a manner that fully complies with the  
23 Constitution and the laws of the United States.

24 THE COURT: And you also need to slow down, otherwise  
25 you're never going to get a transcript of this.



1 MR. OFTELIE: Okay, Your Honor, as long as you want to  
2 be here an hour.

3 We filed this annual report to further this collective work  
4 ensuring that policing services are delivered to the people of  
5 Seattle in a manner that fully complies with the Constitution and  
6 laws of the United States and effectively ensures public and  
7 officer safety and promotes public confidence.

8 The semiannual report filed with the Court was developed in  
9 collaboration with stakeholders in the City of Seattle and charts  
10 a series of actions and measures that not only build on progress  
11 made over previous years but also move the City closer to full  
12 and effective compliance with the Consent Decree.

13 To be certain, Your Honor, much progress has been made in  
14 policing since the City of Seattle and the United States  
15 Department of Justice actively partnered to enter a settlement  
16 agreement in 2012. At that time, Seattle entered the agreement  
17 because it wished to ensure that its police department functioned  
18 at an "exceptional" level, as quoted in the Consent Decree, and  
19 that it had positive relationships with all its communities.

20 Over the past nine years, the Seattle Police Department has  
21 increased diversity in its workforce, implemented new policies  
22 and practices for use of force, de-escalation, and mental health  
23 response, improved consistency of supervision and management,  
24 adopted new accountability systems and analysis, such as the  
25 Force Investigation Team and Force Review Board, and elevated

1 transparency through leading-edge analytics and publicly  
2 accessible open data. In addition, Seattle has designed and  
3 established the Office of Police Accountability, the Office of  
4 Inspector General, and the Community Police Commission to bolster  
5 these accountability measures and community engagement.

6 Yet, Your Honor, to fulfill the vision of the community for  
7 sustainable change, more work needs to be done to not only  
8 rebuild community trust but also ensure constitutional and lawful  
9 policing as well as confidence by the community.

10 To activate this work, the Monitoring Team, in collaboration  
11 with the parties, developed a new Monitoring Plan that was filed  
12 with the Court and an assessment methodology to guide strategy  
13 and action and measures this year. I'll provide brief detail of  
14 those four core areas that are ongoing work this year and  
15 synthesize that for the Court.

16 First, the Monitoring Team and the parties are evaluating the  
17 status of compliance with the Consent Decree, looking at use of  
18 force, crisis intervention, stops and detentions, and  
19 supervision. Also looking at issues related to bias-free  
20 policing and officer misconduct as they're closely related to  
21 those other core areas. The purpose, Your Honor, of the  
22 compliance status update is to provide the Court and the Seattle  
23 community with up-to-date information and evidence-based insight  
24 on where the department stands across the areas that the Consent  
25 Decree covers.

1 The second core area is around improving accountability.  
2 Importantly, we're looking across two dimensions here. The first  
3 dimension is back-end accountability to ensure that the systems  
4 for addressing officer misconduct and deficient performance are  
5 fair, rigorous, unbiased, and thorough, and as such, the  
6 monitoring plan requires the City to update the Court quarterly  
7 and update the United States, City stakeholders, and the  
8 Monitoring Team monthly on the status of these efforts.

9 In addition, we have a second dimension under accountability,  
10 and that's front-end accountability, ensuring that policing is  
11 aligned with community needs and priorities and therefore  
12 democratically and publicly accountable. Included in this is use  
13 of force under crowd management, which, as all the parties know,  
14 has been an area of concern since last year. For this work, the  
15 Office of Professional Accountability, the Office of Inspector  
16 General, and a collaborative of City stakeholders are engaging in  
17 several post-protest investigations, reviews, and a Sentinel  
18 Event Review process that will seek to establish what transpired  
19 and address systemic issues identified. In addition, those  
20 parties are working together to determine what changes,  
21 revisions, or improvements should be made to Seattle's policies  
22 relating to the use of force in crowd situations and the  
23 operational management of protests and circumstances involving  
24 large numbers of people.

25 I would like to say that, in addition, on these

1 accountability areas, critically around front-end accountability,  
2 are innovations such as the Active Bystandership for Law  
3 Enforcement, or ABLE project. The ABLE project was developed by  
4 Georgetown Innovative Policing Program and prepares officers to  
5 successfully intervene to prevent harm, avoid misconduct, and to  
6 create a lawful enforcement culture that supports peer  
7 intervention. The program recognizes that having officers  
8 actively step in and prevent misconduct or potential harm by one  
9 of their peers can help avoid or mitigate bad outcomes in the  
10 first instance. And I'm happy to say that SPD to date has had  
11 792 personnel complete this training and more is ongoing this  
12 year.

13 The third core area of review, Your Honor, is around  
14 providing technical assistance to support innovation and risk  
15 management. And within that area, the Monitoring Team is working  
16 with SPD and the parties on an early intervention system to  
17 identify potentially problematic trends in performance and help  
18 prevent challenges before they arise, as well as an Officer  
19 Wellness Initiative to help improve officer mental health,  
20 well-being, and performance.

21 And the fourth and last in those core areas, in the  
22 monitoring work this year, and as identified in the semiannual  
23 report, is providing technical assistance to support reimagining  
24 public safety. The City is currently engaged in a process of  
25 reimagining public safety and has recently issued a report on

1 possible alternative response. This is important and valuable  
2 work as it is a generally recognized principle that police are  
3 being asked to do too much, not only in Seattle but across the  
4 nation. Alternative response innovations such as the HealthOne  
5 teams are key to providing better public safety and community  
6 resilience in the future.

7 This reimagining public safety work will be beyond what the  
8 parties here, what the Monitoring Team, will be working on. It's  
9 really generational work, as the City, the stakeholders, and  
10 community members determine the form of outcomes they want from  
11 public safety services, design those services, and then build the  
12 capacity of the organizations to deliver.

13 It's important, though, to remember, Your Honor, that just  
14 like the Seattle Police Department, these new services,  
15 organizations, and solutions will need to be lawful and bias-free  
16 and exceptionally trained to intervene in crisis situations, in  
17 de-escalation, detainment, in use of force, in data collection  
18 and in supervision, for just a short list of examples. In this  
19 way the foundation of constitutional policing built from the  
20 Consent Decree acts as a springboard for this transformational  
21 work and long-term culture change in Seattle, and it will  
22 ultimately be up to the City to leverage learning from the  
23 Consent Decree for the long-term future of public safety and  
24 resilience.

25 As the Monitoring team and the City of Seattle do this work,

1 it's vital for the community to understand that the Consent  
2 Decree is not only a foundation for constitutional and lawful  
3 policing, but also a catalyst for the innovation that builds a  
4 more effective and efficient policing and public safety  
5 ecosystem. In fact, while the Consent Decree provides clear and  
6 measurable obligations, it also stipulates that Seattle has  
7 flexibility to develop innovative local solutions. And as  
8 documented in the semiannual report, an array of work is being  
9 done by the City of Seattle to not only put in place structures,  
10 policies, systems, training, and supervision to ensure  
11 compliance, but also to drive innovation in areas such as  
12 bias-free policing, officer wellness, and community engagement.

13 Now, Your Honor, in the very present tense, I would also like  
14 to outline early indications of progress as well as concern  
15 within the context of these unprecedented times. As we all know,  
16 amidst the social upheaval that this country has been in, and as,  
17 of course, the City of Seattle has experienced, brought about by  
18 a global pandemic and generational civil rights uprising, public  
19 safety, like every other aspect of the City, was turned somewhat  
20 upside down. While calls for help from the community and officer  
21 proactivity understandably decreased during the pandemic,  
22 emergency calls are now at or above prepandemic levels as the  
23 world reopens. This demand for services is occurring during a  
24 staggering loss of a number of officers in a short period of  
25 time, with over 300 officers having left the department and while

1 less than 100 have been hired during this same time. While much  
2 analysis and discussion still needs to be done, SPD's supervision  
3 and review mechanisms continue under tremendous strain.

4 Reports are showing that SPD emergency response times are  
5 increasing while reduced resources confront this increase in  
6 emergency calls. This includes high levels of gun violence and  
7 homicide. Public data shows response times for the most serious  
8 calls are now close to prepandemic levels again. And within all  
9 this, there are fewer officers available to respond to calls.  
10 But SPD has continued to decrease the use of force, which is a  
11 good sign, down 28 percent compared to 2019 levels overall, and  
12 down 15 percent when responding to a person in behavioral crisis.  
13 In addition, when SPD does have to directly engage persons in  
14 crisis, arrests are down 7 percent compared to 2019, and the use  
15 of emergent detention is down 39 percent. So there's some really  
16 good indicators of early progress.

17 But it's also clear that while the department is working to  
18 sustain this progress, it also has not lost sight of the need to  
19 innovate and improve. SPD continues to partner with researchers  
20 around the world to better understand the effects of training on  
21 use of force, decriminalization of drug use and possession, on  
22 crime and disorder, also looking at the impacts of social  
23 distancing and quarantine on domestic violence situations. And  
24 by the end of this year, SPD will be the first police service in  
25 the United States to incorporate ideals and data around social

1 justice, equity, and accountability into their management  
2 meetings, along with traditional crime statistics.

3 That all being said, Your Honor, it is also true that much of  
4 the training, technology, and review systems implemented under  
5 the Consent Decree cannot be sustained without necessary budget  
6 and personnel. SPD is at, what I would view, an inflection  
7 point, and the actions and investments of the City will either  
8 tip the department into a deepening crisis or lead the department  
9 into a future in which it can sustain compliance and build trust  
10 in constitutional policing.

11 As one small but important example of this, because of budget  
12 cuts and loss of personnel, SPD is no longer able to activate  
13 their microcommunity policing plans. Essentially, there is no  
14 community policing happening in Seattle. All available officers  
15 are generally now on patrol and in emergency response. It's  
16 estimated that SPD would need approximately 165 more officers to  
17 be able to deliver true community policing.

18 Lastly, Your Honor, the semiannual report brings to light  
19 that there's a robust ecosystem of organizations, including the  
20 Office of Police Accountability, the Office of Inspector General,  
21 and the Community Police Commission, that are supporting  
22 community-based collaboration. It's vitally important for  
23 progress that these organizations continue to partner, to build  
24 communications systems across partners and to work towards its  
25 future, to root and grow their capabilities here in Seattle. And



1 it's critical that the City not only invest in the future of  
2 these accountability organizations but also invest in the  
3 organizations, structures, systems, and people that the community  
4 and SPD need today.

5 The results of the Monitoring Team's work in 2021 will help  
6 the people of Seattle qualitatively and quantitatively assess  
7 compliance with the Consent Decree, and the findings will then  
8 help determine when and how the City of Seattle, the U.S.  
9 Department of Justice, and the federal court will move toward  
10 closure or require additional work ongoing. The end-of-year  
11 report will provide a full assessment of progress and compliance  
12 with the Consent Decree and the steps necessary for 2022.

13 The Monitoring Team, Your Honor, looks forward to completing  
14 this work effectively, efficiently, and legitimately for the  
15 people of Seattle.

16 Thank you, Your Honor.

17 THE COURT: Before you run off, I'm going to ask you the  
18 same question that I asked Mr. Holmes. At the risk of  
19 misinterpreting the results of our recent municipal primary  
20 election, where there seemed to be strong support for people who  
21 have a more problematic view of the department, when, if it is  
22 justified, will the Monitoring Team say: You didn't do this  
23 right and it needs to change?

24 MR. OFTELIE: I think, Your Honor, this year, as part of  
25 our work, we're doing a very rigorous analysis of SPD's actions

1 and its use of force, its management and operational processes,  
2 the way it does its review, its training. If we find in all that  
3 research and analysis that SPD has fallen short in an area  
4 relative to the Consent Decree, we will document that and make a  
5 plan with them to address that issue.

6 I think the public, the community, needs to understand that  
7 we're in the middle of that process right now, that we are  
8 actively reviewing all of those areas, and that we are ready and  
9 able to respond to problems that we, the Monitoring Team, finds.

10 THE COURT: All right. Thank you.

11 I'm going to exercise my prerogative, as the person who  
12 convened this meeting, to go last. I asked for updates from the  
13 Department of Justice because I want to know where they are and  
14 where they're going; I asked for it from the City of Seattle  
15 because they are a party to this agreement and they are an  
16 essential part of any changes that are to be made; the Monitor,  
17 to give Dr. Oftelie the opportunity to talk about what they are  
18 doing, which I think sometimes gets concealed under various  
19 layers of effort, some good, some bad; the Seattle Police  
20 Department and the Mayor and the City Council, all of whom, under  
21 the charter, are in some manner represented by the City Attorney;  
22 and what I consider to be the interested stakeholders in this:  
23 the Office of Police Accountability, the Office of Inspector  
24 General, and the Community Policing Commission. It's not my  
25 intention to come down hard on the CPC, but I think that given

1 some of the turmoil that's gone on in that organization, they  
2 periodically reinvent themselves and start trying to exceed what  
3 it is that's within their grasp.

4 When I meet with my fellow judges handling Consent Decree  
5 cases in other cities, I tell them that this is the only case in  
6 my docket which has two parties and nine points of view. That is  
7 often the case here.

8 I will spare you the history that I have written out because  
9 it's largely been covered by other people. This case was filed  
10 July 27, 2012. I would remind everyone that the terms of the  
11 Consent Decree are not the Court's terms. They were negotiated  
12 between the City and the Department of Justice. When I signed  
13 them in the form of an order, they then became an order of the  
14 Court, which must be obeyed. We made a number of changes, which  
15 I thought were positive, up through 2017, when the City Council  
16 passed the Police Accountability Ordinance.

17 As I discussed with Mr. Sargent, the role of the CPC under  
18 the Consent Decree was extremely, extremely limited. It is now,  
19 under the Accountability Ordinance, a commission of the City of  
20 Seattle, not a party to this litigation, but I have tried  
21 steadfastly to respect that their role is part of the City. I  
22 find it difficult to accept the implicit criticism that somehow  
23 the Monitor owes a special duty to the CPC. They are all owed  
24 the same level of engagement, and that's what we hope to provide.

25 Going to January 2018, I indeed found full and effective

1 compliance outside of the five-year original prediction, but that  
2 would have then triggered the two-year maintenance period, and at  
3 that time I made a major caveat to that finding, which was the  
4 Collective Bargaining Agreement, known as the labor contract,  
5 principally with the Police Officers Guild. What happened when  
6 the new contract was unveiled was -- and this is in May of  
7 2019 -- I orally ruled the City had fallen out of compliance, and  
8 that was followed by a May 2019 order for a methodology to be  
9 presented for assessing accountability, as in the accountability  
10 regime, and how that would bring the City back into compliance.

11 By November, late November 2019, there was filed proposals  
12 for a third-party assessment -- the City on December 13, 2019,  
13 and the CPC on January 6th, 2020. 2020 brings us where we begin  
14 our problems with the pandemic.

15 I would note that during the summer of 2019 both the City and  
16 the Department of Justice rejected the Court's finding that  
17 disciplinary proceedings were outside the scope of the Consent  
18 Decree. And, in fact, both the City and the Department of  
19 Justice in the summer of 2019 were urging the termination of the  
20 Consent Decree.

21 In light of the COVID-19 pandemic, which really started in  
22 February of 2020, the tragic murder of George Floyd and the  
23 breakdown in the Seattle Police Department crowd-control  
24 procedures, the City, I think, found itself in a position of  
25 having to withdraw its proposal to terminate.

1 Since the Court set the current status conference date, I  
2 found it significant that the Monitor filed the 2021 semiannual  
3 report, which includes reports from various stakeholders,  
4 including the Mayor, and the City filed its quarterly  
5 accountability update.

6 I was, I guess, not surprised to open the newspaper the other  
7 day and find an Op-Ed from Former Chief of Police Carmen Best  
8 with the provocative headline "Where is Seattle's plan to address  
9 crime and prioritize public safety?" Chief Best went on to say,  
10 "I knew the Council's actions and rhetoric would lead to an  
11 exodus of good officers who could serve in another community with  
12 greater support for the risks they take and the vital services  
13 they provide."

14 It's not my job to engage in an analysis of politics, and I  
15 will steadfastly attempt to avoid doing so, but in response to  
16 the question of where is the plan, I can tell you how I view that  
17 situation. Frankly, the position of mayor is open. There's an  
18 election this fall. We have two candidates. And there has been  
19 a statement made by Mayor Durkan that she does not want to tie  
20 the hands of the new mayor. As a result, significant decisions  
21 are being postponed. We have an interim police chief who is  
22 doing the best he can, but he carries the word "interim" with all  
23 the implications that go with that. We have city council  
24 elections featuring people who have different points of view of  
25 how to proceed. We have a city attorney election featuring

1 perhaps, most starkly, candidates from somewhat the left and  
2 somewhat the right. And as the CPC correctly notes, we have both  
3 SMPA and SPOG collective bargaining negotiations coming up or  
4 being engaged in right now. And I will add, from my own point of  
5 view, that we have a police department budget that has been  
6 threatened by abolition, zeroing out, a 50 percent cut, a  
7 20 percent cut, a 5 percent cut.

8 As I said earlier, my job is not to tell you what to do; it  
9 is to ensure you did what you said you were going to do. And I  
10 take that obligation that the Consent Decree is an order of the  
11 Court and it will be followed. So here are some suggestions on  
12 how we do so, strictly from the point of view of the Court.

13 The City, meaning the Mayor and other elected officials and  
14 the City Council, need to be constructive, not destructive, to  
15 progress. I have seen too much of knee-jerk reaction and not  
16 enough forethought. We have to be vigilant in continuing to  
17 reduce bias and disparities. At the same time, we need to  
18 recognize public safety is an imperative for all residents and  
19 communities. I can tell you I get lots of correspondence from  
20 people saying "You can't abandon the police precinct. They're my  
21 police department." There is, you know, an essential requirement  
22 for public safety.

23 So the next steps for the City in terms of its elected  
24 officials to help in this process is we need to develop a role  
25 for the S.P.O.G., or SPOG, to advance the progress. We have lots

1 of good innovation happening right now, more than I would have  
2 imagined, and I'm delighted with it. We have community groups  
3 that are stepping up to attempt to transform an intervention at  
4 an earlier stage with people who ultimately could end up in the  
5 criminal justice system. We're reimagining policing, not as  
6 fast as some people would like, but things like the 911  
7 transformation, the HealthOne program, those are things that the  
8 City needs to encourage and allocate resources to scaling up  
9 those new services and at the same time improving the Seattle  
10 Police Department. If we would do that -- and I'm not sure we  
11 can with an election pending -- we would have a better police  
12 department, we would have greater equity and inclusion, and we  
13 would have a better City, and, most importantly, you would  
14 finally be able to get rid of me.

15 Counsel, thank you for your attention today, and this hearing  
16 is in recess.

17 (Adjourned.)  
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## C E R T I F I C A T E

I, Nickoline M. Drury, RMR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do certify that the foregoing is a correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter.

/s/ Nickoline Drury

Nickoline Drury